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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 KIM A. ETIENNE,

9 Plaintiff,

10 v.

11 UNITED STATES OF AMERICA,

12 Defendant.

13 CASE NO. 21-cv-01429

14 ORDER

15 On October 24, 2023, Plaintiff Kim Etienne moved to voluntarily dismiss his
lawsuit against Defendant United States of America under Fed. R. Civ. P.
41(a)(1)(A). Dkt. No. 53. The Court could not, however, grant the relief requested on
Etienne's unilateral motion because the Government had already filed an answer.
Dkt. No. 18; *see* Fed. R. Civ. P. 41(a)(1)(i). So the Court directed the Clerk to renote
Etienne's motion for November 10, 2023, meaning the Government's response was
due on November 6 and Etienne's reply was due on November 10. *See* Dkt. No. 53;
see also LCR 7(d)(3). Neither party filed additional papers in support of or
opposition to Etienne's motion for dismissal. *See* Dkt.

Because Etienne may no longer dismiss his case as a matter of right, and because he does not present his motion as a stipulation, the Court construes his request as a motion to dismiss under Rule 41(a)(2). “Rule 41(a)(2) permits the voluntary dismissal [of a case] by court order at the request of the plaintiff, if the court finds it proper.” *Langere v. Verizon Wireless Servs.*, LLC, 983 F.3d 1115, 1119 n.3 (9th Cir. 2020). So long as the defendant will not be prejudiced or unfairly affected by dismissal, district courts should exercise their discretion to allow dismissal. *Stevedoring Servs. of Am. v. Armilla Int’l B.V.*, 889 F.2d 919, 921 (9th Cir. 1989). Dismissal under Rule 41(a)(2) does not require imposing attorneys’ fees and costs. *Id.*

11 Etienne has concluded that he cannot proceed pro se with this medical
12 malpractice case and he wishes to dismiss his case. Dkt. No. 52 at 5. The
13 Government does not oppose dismissal. *See LCR 7(b)(2)* (“[I]f a party fails to file
14 papers in opposition to a motion, such failure may be considered by the court as an
15 admission that the motion has merit.”).

16 Accordingly, the Court GRANTS Etienne's motion under Fed. R. Civ. P.
17 41(a)(2), and his action is dismissed without prejudice. Each party is to bear its own
18 costs and fees. All other pending motions and case deadlines are STRICKEN as
19 moot.

Dated this 13th day of November 2023.



Jamal N. Whitehead
United States District Judge